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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Amendment of Part 25 of the Commission's Rules to Establish Rules and Policies Pertaining to the Second Processing Round of the Non-Voice, Non-Geostationary Mobile Satellite Service	)	IB Docket No. 96-220

COMMENTS OF L/Q LICENSEE, INC.

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December 20, 1996

SUMMARY

In these comments, L/Q Licensee, Inc. (LQL), licensee of the Globalstar™ low-earth orbiting satellite system, opposes the Commission's proposed use of competitive bidding to award licenses for the second processing round of the Non-Voice, Non-Geostationary Mobile-Satellite Service (NVNG MSS). As the Commission recognizes, use of auctions in the United States may trigger multiple sequential auctions by foreign administrations. Such a result could lead to higher costs for NGSO satellite system operators, higher subscriber costs, and increased uncertainty for system operators in developing business plans.

The Commission seeks comment on whether multiple, sequential auctions are likely to occur. However, a recent Commission report indicates that many countries are following the lead of the United States in the use of auctions to award licenses for mobile services. Thus, the record before the Commission indicates that this result is likely if the Commission uses auctions for NVNG MSS.

In any event, none of the statutory objectives required to be met for use of competitive bidding for a specific service would be promoted by the use of auctions to award NVNG MSS licenses. Accordingly, the Budget Act does not require the use of auctions in this proceeding, and the Commission should decline to adopt competitive bidding rules. The legislative history of the Budget Act confirms that this is the correct conclusion. In granting authority to use auctions, Congress directed the Commission to continue to endeavor to find engineering solutions for mutually exclusivity and used as an example an NGSO satellite proceeding.

Moreover, use of auctions in this proceeding may result in multiple, sequential auctions for future NGSO satellite proceedings. Eventually, continued use of auctions in the United States may lead to abandonment of the ITU's current "first-come, first-served" approach to assigning frequencies for satellite systems. An alternative procedure such as an allotment plan could place severe restrictions on the U.S. satellite industry, contrary to the public interest. Accordingly, the Commission should not use competitive bidding to award NGSO MSS licenses.

TABLE OF CONTENTS

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L/Q Licensee, Inc. (LQL), by its undersigned attorneys, hereby comments on the Commission's proposal in the Notice of Proposed Rule Making, FCC 96-426 (released October 29, 1996) (NPRM), to award licenses by competitive bidding to applicants in the second processing round of the Non-Voice, Non-Geostationary Mobile-Satellite Service (NVNG MSS).

LQL is the licensee of Globalstar™, a low-earth orbiting satellite telecommunications system, which will operate in the 1.6/2.4 GHz bands.[1/] Although LQL is not an applicant in the second processing round for NVNG MSS, Globalstar™, like NVNG MSS systems, is designed to provide global satellite services. The Commission itself recognizes in the NPRM that the use of competitive bidding in the United States to award licenses to global, non-geostationary (NGSO) satellite systems may adversely affect the development of

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[1/] See Loral/Qualcomm Partnership, L.P., 10 FCC Rcd 2333 (Int'l Bur. 1995), aff'd, FCC 96-279 (released June 27, 1996); L/Q Licensee, Inc., DA 96-1924 (released Nov. 19, 1996).

such systems internationally. Accordingly, LQL has a substantial interest in whether the Commission uses competitive bidding in licensing spectrum available for NVNG MSS systems, and is filing these comments to express its strong opposition to the Commission's auction proposal in the NPRM.

I. ADVERSE INTERNATIONAL CONSEQUENCES MILITATE AGAINST USE OF COMPETITIVE BIDDING FOR NVNG MSS LICENSES.

In the NPRM, the Commission recognizes that the potential success of NGSO satellite systems would be diminished if multiple, sequential auctions were held to award "landing rights" for global service, and it seeks comment on whether the use of auctions to award licenses in the United States is likely to trigger such a result. See NPRM, ¶ 80 ("If we auction licenses for service in this country, providers are likely to face a series of sequential auctions in different countries."). Evidence already before the Commission indicates that the answer to this question is "yes." Accordingly, using auctions in this proceeding, or in any other proceeding to award licenses for NGSO satellite systems, would be contrary to the record before the Commission on this issue.

First, as the Commission concedes in the NPRM, multiple, sequential auctions for access to NVNG MSS spectrum would impair the ability of system operators to provide MSS in at least two respects.[2/] On the one hand, an increase

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[2/] In the MSS Above 1 GHz rulemaking, the Commission rejected the concerns of applicants regarding multiple, sequential auctions, and adopted a competitive bidding procedure (although it was ultimately unnecessary), finding that the (continued...)

in costs of the systems through participation in multiple, sequential auctions poses a significant threat to their economic viability. These costs would have to be passed on to subscribers, increasing the cost of service, and thereby limiting the potential subscriber base from which to recover revenues. This is particularly damaging to service providers such as LQL who have predicated their demand, and hence their system designs, on mass marketing of services.

Moreover, the uncertainty of obtaining access to spectrum through an auction process would make planning the business difficult. Use of auctions to award licenses would likely subvert the long-standing spectrum allocation and assignment processes that originate with World Radiocommunication Conferences and culminate with generally consistent spectrum assignments across nearly 200 administrations. As a result, not only would the costs of the system be unpredictable, but also the areas where service could be provided may never be planned in advance. As the Commission recognizes, such uncertainty would

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[2/](...continued)
"comments have provided no concrete evidence . . . that an auction would have these harmful effects." See Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, 9 FCC Rcd 5936, 5971 (1994) ("Big LEO Rules Order"). Apparently, more recent information contradicts that finding two years ago because the Commission now concedes that these harms will occur. NPRM, ¶ 80.

multiply the risks of developing the business to the point of deterring entry.[3/] NPRM, ¶ 80.

A recent report, sponsored by the Wireless Telecommunications Bureau (and initiated by the current Chief of the International Bureau), surveyed thirty cellular and Personal Communications Services (PCS) licensing proceedings in over 25 countries.[4/] The report notes that the United States has led the international telecommunications community in the introduction and use of competitive bidding, and suggests that the success of auctions is likely to promote more countries to use this method for assignment of licenses.[5/] The report finds that the use of auctions to assign spectrum will continue to increase worldwide as liberalization of telecommunications markets lead to open entry and greater numbers of applicants:

> Liberalization of the telecommunications sector will compound the difficulty a country has selecting among applicants for licenses. For this and other reasons, several countries have already indicated that they will probably use auctions to assign their next set of licenses. These include Mexico, the Netherlands, Taiwan, Chile, Argentina, and Brazil.[6/]

[3/] In addition to the harm to operators, the Commission correctly notes that use of global auctions would greatly complicate the international coordination process for global satellite systems. NPRM, ¶ 81.

[4/] Mark Spicer, International Survey of Spectrum Assignment for Cellular and PCS (Sept. 1996).

[5/] Id. at 11 ("The success of auctions in the U.S. and the large financial bids for licenses in countries such as Columbia, Greece, and Austria have encouraged many telecommunications ministers to reevaluate their assignment methods.").

[6/] Id.

Thus, the Commission's own data indicate that foreign administrations are following the lead of the United States in awarding licenses for new mobile radio services. There is no reason why NVNG MSS systems are likely to be treated differently if the Commission implements competitive bidding in this proceeding. Accordingly, it must be assumed for purposes of this proceeding that many, if not most, other nations will follow the Commission's lead by attempting to auction satellite spectrum. Given the current awareness of the global impact of licensing NGSO MSS systems,[7/] it is simply unrealistic for the Commission to assume otherwise.

II. COMPETITIVE BIDDING DOES NOT PROMOTE THE REQUIRED STATUTORY OBJECTIVES.

The Commission's authority to use competitive bidding to select among mutually exclusive applicants is limited by statute to circumstances in which the auction process will promote four legislative objectives set forth in Section 309(j) of the Communications Act of 1934, as amended.[8/] Although the Commission recognizes this statutory limitation, the NPRM provides only a cursory analysis of whether the objectives are fulfilled. See NPRM, ¶¶ 86-87. When considered in

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[7/] See, e.g., International Telecommunication Union World Telecommunications Policy Forum, Revised Report by the Chairman (Oct. 24, 1996).

[8/] See 47 U.S.C. § 309(j)(2)(B).

light of the implications recognized by the Commission, it becomes clear that an auction for NVNG licenses would not promote the statutory objectives, as required.

A. Development and Rapid Deployment of New Technologies.[9/] With respect to the first statutory objective, the Commission claims -- without specific discussion of satellite services -- that the public interest would be served to the extent that auctions "would allow us to license [NVNG] systems more quickly than other licensing methods." NPRM, ¶ 86. The Commission's claim is apparently based on information obtained from the use of auctions for terrestrial services. When the Commission is attempting to issue licenses for new terrestrial services in several hundred markets, use of simultaneous auctions is clearly more rapid and efficient than use of other available procedures.

However, in this proceeding, the Commission is proposing to issue only three licenses total. See NPRM, ¶ 88. In similar proceedings regarding NGSO satellite licenses, the Commission has been able to issue licenses rapidly through strict application of specific legal, financial and technical qualifications[10/] or by allowing the applicants to agree on a band-sharing proposal.[11/] In fact, precedent indicates that auctions are not necessarily the most rapid form of processing for satellite licenses. For example, eleven months elapsed between this year's auction

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[9/] 47 U.S.C. § 309(j)(3)(A).

[10/] See Big LEO Rules Order, 9 FCC Rcd at 5936.

[11/] See NPRM, ¶ 7, citing Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Non-Voice, Non-geostationary Mobile Satellite Service, Report and Order, 8 FCC Rcd 8450 (1993).

and the grant of licenses for the Direct Broadcast Satellite service.[12/] But, only three and half months passed between the release of strict legal, financial and technical rules for the MSS Above 1 GHz service and the grant of three Big LEO licenses.[13/] Thus, as an initial matter, terrestrial and satellite services are not comparable regarding the efficiency of auctions, and, furthermore, the Commission has no basis to claim that auctions would be a more rapid and efficient means to award NVNG MSS licenses.

B. Economic Opportunity and Competition.[14/] Competitive bidding would not promote this objective, a conclusion which the Commission apparently recognizes because it does not even attempt to justify the use of auctions under this provision in the NPRM. The competitive bidding proposal by the Commission is a preclusive format which limits prospective, second-round NVNG MSS licenses to three. See NPRM, ¶ 88. By developing a spectrum-sharing solution, the Commission may be able to authorize broader participation in the service, thereby improving opportunities for designated entities. See NPRM, ¶ 100 (seeking

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[12/] See Public Notice, "FCC's International Bureau Ready to Grant DBS Licenses to MCI and Echostar; Commission Speeds New Video Services in Wake of Successful DBS Auction" (released Dec. 6, 1996) (reporting on action for auctions conducted Jan. 24 and 25, 1996).

[13/] Compare Big LEO Rules Order, 9 FCC Rcd at 5936 (released Oct. 14, 1994) with Loral/Qualcomm Partnership, L.P., 10 FCC Rcd 2333 (released Jan. 31, 1995) and TRW Inc., 10 FCC Rcd 2263 (released Jan. 31,1995) and Motorola Satellite Communication, Inc., 10 FCC Rcd 2268 (released Jan. 31, 1995).

[14/] 47 U.S.C. § 309(j)(3)(B).

comment on what procedures could be used to promote participation by designated entities).

C. Recovery of the Value of Public Spectrum Resource.[15/] If the Commission employs competitive bidding for NGSO systems, there are two countervailing considerations which would neutralize any benefit to the U.S. Treasury. First, while an auction might recover a portion of the "value of public spectrum" in the United States, the U.S. public would likely suffer increased costs for NVNG MSS as a result of other countries holding similar procedures for award of licenses to provide service in this spectrum.

Second, if the Commission continues to press to use auctions for NGSO satellite systems, then applicants for these systems may start to avoid U.S. licensing procedures. Unlike licenses for domestic terrestrial wireless services, the Commission is only one of over a hundred administrations which can authorize construction, launch and operation of an NGSO satellite system that has the capability of serving United States markets. Use of auctions in the United States for such licenses would suggest to operators to find more friendly administrations. Such a result would defeat the third legislative goal because the U.S. Treasury would not realize the same profits from auctions, application fees or regulatory fees for NGSO satellite systems.

[15/] 47 U.S.C. § 309(j)(3)(C).

D. Efficient Use of Spectrum.[16/] The Commission claims that use of auctions "should encourage efficient use of electromagnetic spectrum" because an applicant "would only bid for the minimum amount of spectrum needed." NPRM, ¶ 87. This rationale is completely at odds with the Commission's proposals in the NPRM. The Commission has proposed specific spectrum assignments for each of three licenses to be auctioned. NPRM, ¶ 88. Thus, bidders are not weighing the costs and benefits of bidding on several segments of spectrum, and would make, at best, a very limited judgment on how much spectrum they can use.[17/]

Moreover, as the Commission is well aware, satellite systems which operate with Code Division Multiple Access (CDMA) technology have the ability to share frequencies, eliminating mutually exclusivity and the need to assign specific frequencies to only one system.[18/] If the Commission auctions licenses as proposed in the NPRM, it squanders this opportunity to develop efficient use of the spectrum through spectrum-sharing technology.

In summary, none of the Budget Act's statutory objectives would be promoted by the use of auctions to award NVNG licenses. Accordingly, the statute does not require the use of auctions in this proceeding, and the Commission should decline to adopt such rules.

[16/] 47 U.S.C. § 309(j)(3)(D).

[17/] Cf. Big LEO Rules Order, 9 FCC Rcd at 5972 (adopting procedure to auction 2.0625 MHz segments).

[18/] See id. at 5942, 5954 & 5967 (finding no need to assign by auction frequencies which can be shared by multiple operators).

The legislative history of the Budget Act confirms this conclusion. Congress emphasized that the authority to use auctions does not relieve the Commission of its "obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings."[19/] In fact, the legislative history of the Act cites an NGSO satellite licensing proceeding as an example of a case where the Commission should seek to fulfill this obligation by tools such as "spectrum sharing arrangements and the creation of specific threshold qualifications, including service criteria."[20/]

Thus, the Budget Act provides at least two reasons why the Commission should not to use auctions for NGSO satellite systems. First, auctions for NGSO satellite licenses would not fulfill the required statutory objectives in Section 309(j)(3) of the Act. Second, Congress explicitly recognized the Commission should endeavor to license NGSO MSS systems through engineering solutions rather than competitive bidding. For both reasons, the Commission should abandon any attempt in this proceeding to use auctions.

[19/] 47 U.S.C. § 309(j)(6)(E).

[20/] H.R. Rep. No. 111, 103d Cong., 1st Sess. 258 (1993), reprinted in 1993 U.S.C.C.A.N. 378, 585-86.

III. USE OF COMPETITIVE BIDDING TO AWARD SECOND ROUND NVNG LICENSES MAY HAVE AN ADVERSE IMPACT ON ALL OPERATORS OF NGSO SATELLITE SYSTEMS.

One of the most significant harms arising from the use of competitive bidding to award NGSO satellite licenses is the uncertainty that will result for operators who must participate in multiple, sequential auctions for the right to provide service around the globe. NPRM, ¶ 80. As the Commission recognizes, such uncertainty may deter entry by new applicants and may impede the provision of service and development of new services. Id. This alone is sufficient reason not to use competitive bidding for second round NVNG licenses.

In adopting rules for NVNG licensing in this proceeding, the Commission must also take into account the impact of a decision by the United States on licensed and proposed NGSO satellite systems. At this date, the Commission has awarded licenses to six NGSO satellite systems, three Big LEO systems[21/] and three Little LEO systems.[22/] Additional NGSO systems are proposed for authorization in the United States, including broadband systems such as Teledesic

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[21/] See Loral/Qualcomm Partnership, L.P., 10 FCC Rcd 2333 (Int'l Bur. 1995); Motorola Satellite Communications, Inc., 10 FCC Rcd 2268 (Int'l Bur. 1995); TRW Inc., 10 FCC Rcd 2263 (Int'l Bur. 1995).

[22/] Orbital Communications Corporation, 9 FCC Rcd 6476 (1994), recon. 10 FCC Rcd 7801 (1995); STARSYS Global Positioning, Inc., 11 FCC Rcd 1237 (Int'l Bur. 1995); Volunteers In Technical Assistance, 11 FCC Rcd 1358 (Int'l Bur. 1995).

in Ka-band.[23/] Like the service providers for new NVNG systems, the service providers of all these systems must seek spectrum assignments in the foreign countries they wish to serve. Although LQL is not aware of any country which has specifically decided to use auctions for NGSO satellite systems, once the United States initiates an auction process for NGSO systems, foreign administrations are likely to consider using auctions to authorize service for other NGSO satellite systems. Adopting auctions here would impose uncertainty on applicants in this and future proceedings. It is contrary to the public interest for the Commission to take action which would hamper the efforts of U.S. licensees to institute service by proposing auctions for any NGSO satellite system.

Moreover, unless the U.S. adopts a less profit-taking approach to authorizing global satellite systems, it may lose the opportunity to do so. There is already pressure at the ITU to abandon the "first-come, first-served" approach to authorizations for satellite spectrum. This pressure arises from "concerns of many countries that the developed world, and the U.S. in particular, is garnering the lion's share of the economic and other benefits under the current system."[24/] Introduction of spectrum auctions in the U.S. likely will increase both the pressure for change, and the chance that the ITU will concede to it. The most likely

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[23/] See Rulemaking to Amend Parts 1, 2, 21 and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, 3 CR 857, 863 (1996).

[24/] See Charles L. Jackson, et al., Public Harms Unique to Satellite Spectrum Auction, at 23 (Mar. 18, 1996).

alternative procedure would be adoption of an allotment plan, such as for DBS,[25/] to assure each nation a fair share of the revenues, with the consequent rigidity acting to restrict innovation and expansion.[26/] Such a change could place severe restrictions on the burgeoning U.S. satellite industry and on access to these new technologies and services by U.S. markets. Neither of these results serves the public interest.

[25/] See Direct Broadcast Satellites, 90 FCC 2d 676 (1982).

[26/] Public Harms, at 25-26.

IV. CONCLUSION

For the reasons set forth above, LQL strongly recommends that the Commission not use competitive bidding to award licenses for the second processing round of NVNG applicants.

Respectfully submitted,

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December 20, 1996

CERTIFICATE OF SERVICE

I hereby certify that on this, the 20th day of December, 1996, I have served a copy of the foregoing Comments of L/Q Licenses, Inc. by hand-delivery upon the following parties:

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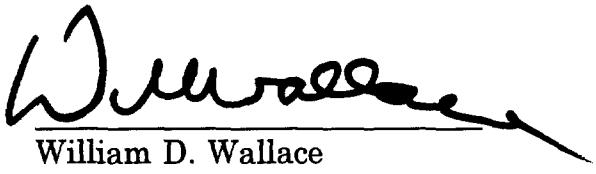

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